

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 332 of 1987

WITH

LETTERS PATENT APPEAL NO. 476 of 1987

in

SPECIAL CIVIL APPLICATION No 4853 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT JUDGE, (Ahmedabad Rural)

Versus

GOVINDBHAI K MARU

Appearance:

MS. MANISHA LAVKUMAR, ASSISTANT GOVERNMENT PLEADER
for Appellant- District Judge.

MR JITENDRA MALKAN for Respondent- Govind Kana
Maru-Absent.

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

Date of decision: 31/08/2000

ORAL JUDGEMENT (Per : A.K. Trivedi,J.)

Both the aforesaid appeals arise from a judgment rendered by the learned Single Judge of this Court on 31-8-1987 in the proceedings of Special Civil Application no.4853 of 1984.

That vide impugned order and judgment, the learned Single Judge has partly allowed the petition and has directed the original respondent-District Judge, (Ahmedabad Rural), to reinstate the original petitioner with effect from 1-10-1987, on the same job as he was at the time when the impugned order of termination was passed. However, the learned Single Judge has rejected the claim of the petitioner in respect to backwages as claimed in the petition.

On account of above stated decision, the original respondent being aggrieved by the order for reinstating the petitioner on the same job, has preferred Letter Patent Appeal no.332/1987 while original petitioner-Govind Kana Maru, having been aggrieved by the judgment and order regarding rejection of claim for backwages, has preferred Letters Patent Appeal no.476 of 1987.

2. That the parties of above referred to two appeals are hereinafter referred to as petitioner and respondent of Special Civil Application no.4853/1984 for the sake of clarity and convenience.

The petitioner-Govind Kana Maru was appointed as a Sweeper in the Court of Civil Judge (J.D.), Dhanduka, District (Ahmedabad Rural) on the vacancy of his deceased father at the same rate of pay paid to his father Kana Pasava vide order dated 18/19-6-1970 of the then District Judge(Ahmedabad Rural). The appointment came into force from the date of issuance of the order. A copy of the said order is produced vide page 21 of the compilation.

It appears from the record that petitioner-Govind Kana continued to serve as a Sweeper on the said post from 1970 till 2-1-1984; for a period of about 14 years. That vide order dated 2nd January, 1984 services of the petitioner-Govind Kana was terminated with immediate effect as his work was not found satisfactory. The said order was passed by the then District Judge (Ahmedabad Rural) and the copy of the termination order is produced

vide page 28. The petitioner-Govind Kana challenged the validity of said termination order by filing Spl.C.A. no.4853/1984 with a prayer regarding reinstatement with full backwages and continuity of service. That the learned Single Judge after hearing the parties passed the impugned order, as stated hereinabove, which is challenged by the respective parties in the above stated two appeals.

3. The learned A.G.P. appearing on behalf of the District Judge (Ahmedabad Rural)-the original respondent has urged that the petitioner being a part-time employee on a fixed monthly remuneration cannot be treated as an employee working on regular establishment and termination of his service does not require any procedure to be followed either prescribed under the Rules or governed by the principles of natural justice. It is also submitted that order of termination being simpliciter cannot be termed as a punitive action, and thereby, no question of application of principles of natural justice arises on the said count. That the learned Single Judge has erred in holding that order of termination is bad on account of violation of principles of natural justice. Reliance is placed on the observations made by the Honourable Supreme Court in the matter of STATE OF UTTAR PRADESH AND ANOTHER VS. KAUSHAL KISHORE SHUKLA, (1991) 1 SUPREME COURT CASES 691.

4. The submission urged by the learned A.G.P. on behalf of the original respondent-District Judge (Ahmedabad Rural) could hardly merit acceptance because the termination order clearly stated that services of the petitioner was ordered to be terminated as his work was not found satisfactory. It is undisputed that no material was produced before the Single Judge in the proceedings of Spl.C.A. no.4853/1984 to show that prior to service of termination order any memo was issued to the petitioner or any intimation was given to the petitioner about his alleged unsatisfactory work. Under the circumstances, the learned District Judge appears to have treated the conduct of the employee as some sort of misconduct regarding discharge of duties. It is well settled that any action which is likely to cause prejudicial civil consequences requires to be preceded by an opportunity to show cause under the principles of natural justice, and as such, in our opinion, the learned Single Judge has rightly held that the impugned order of termination was bad on account of violation of the principles of natural justice. Furthermore, the said action cannot be treated anything less than a punitive measure for the alleged misconduct of the employee as is

apparent from the reasons for issuing the termination order, and thereby also, observance of the principles of natural justice was a prerequisite to the issuance of the impugned order of termination.

In this context we may note the following observations of the Supreme Court in the matter of THE MANAGEMENT OF UTKAL MACHINERY LTD. VS. WORKMAN SANTI PATNAIK (AIR 1966 SC 1051), made in paragraph 6 of the judgment which fortify the view taken by us:

"In the absence of any Standing Order, the unsatisfactory work of an employee may be treated as misconduct and when the respondent was discharged according to the management for unsatisfactory work, it should be taken that her discharge was tantamount to punishment for an alleged misconduct. If this conclusion is correct, the management was not justified in discharging the respondent from service without holding a proper enquiry....."

5. The petition was contested only on the ground that the salary of the employee was being paid from a contingency fund, and therefore, the employee was a temporary employee and his service conditions were not governed by the Rules governing the services of a civil servant. The learned Single Judge has rejected the said contention and in our opinion, rightly so, considering the fact that the employee had continued to serve on the said post for more than a decade - about 14 years on the same post. The source of payment of wages would not determine the nature of his employment and in view of the said fact, it was rightly held that in the absence of giving any opportunity to the employee to make amends or to explain the grievance of the alleged unsatisfactory work, the impugned order of termination was not sustainable in law. The observations referred to and relied on by the learned AGP in the matter of STATE OF UTTAR PRADESH AND ANOTHER VS. KAUSHAL KISHORE SHUKLA (Supra) has no application to the controversy involved in the present matter, as were made, in the context of a different set of facts, and in a case where the service conditions of employee was governed by the prescribed Rules. Under the circumstances, in our considered opinion, no interference is warranted in respect to order of reinstatement passed by the learned Single Judge vide impugned judgment.

6. The learned Counsel for the appellant of Letters Patent Appeal no.476/1987 has not remained present, and

as such, we have no assistance to appreciate the contention raised in the appeal. However, on perusal of appeal memo, we do not find any substantive ground to assail the impugned order regarding rejection of the claim of backwages as made by the petitioner. The learned Single Judge has dealt with the issue at length and having considered the affidavit-in-reply has held that the conduct of the employee was found to be insolent and remonstrating to his superior officers when he was asked to work properly. Furthermore, in the absence of any material to show that the petitioner was not gainfully engaged during the said period the principle of no work no wages would apply, and in the facts and circumstances of the case, the learned Single Judge has rightly rejected the claim made by the petitioner for backwages and continuity of service etc.

On the basis of foregoing discussion, we hold that both the appeals must fail and are therefore dismissed with no order as to costs.

(R.K.Abichandani,J.)

(A.K.Trivedi,J.)

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